

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION**

MARIA ALVAREZ

v.

WAL-MART, INC.

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CIVIL ACTION NO. 2: 21-cv-10
JURY REQUESTED

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW defendant, **Wal-Mart, Inc. (incorrectly named Walmart)** (“Defendant”), and pursuant to 28 U.S.C. §1446 and §1441(b), files the Notice of Removal of the present cause from the 293rd Judicial District Court of Maverick County, Texas, in which it is now pending, to the United States District Court for the Western District of Texas, Del Rio Division, and in support thereof would respectfully show the following:

1. Defendant, **Wal-Mart, Inc.**, is the sole defendant, and Maria Alvarez (“Plaintiff”) is the sole plaintiff in a lawsuit commenced in the 293rd Judicial District Court of Maverick County, Texas, Cause Number 21-02-39674-MCV.

2. Plaintiff’s Original Petition was filed on February 22, 2021, in the 293rd Judicial District Court of Maverick County, Texas, bearing the style *Maria Alvarez v. WalMart* and the Cause Number 21-02-39674-MCV. A true and correct copy of the service of process on Defendant, Plaintiff’s Original Petition, and the docket from the state court cause of action are attached and incorporated herein as Exhibits 1-3, respectively.

3. Plaintiff served her Original Petition upon defendant **Wal-Mart, Inc.** via certified mail on March 12, 2021, through registered agent, C T Corporation System.

4. Defendant, **Wal-Mart, Inc.**, is a Delaware limited liability company organized and existing under the laws of the State of Delaware. Its principal place of business is 702 SW 8th Street, Bentonville, Arkansas, 72716-6209.

5. According to the lawsuit, Plaintiff is an individual residing in Maverick County, Texas.

6. No change in the State of formation, organization, incorporation, or the principal place of business of Defendant, **Wal-Mart, Inc.**, or its respective member, has occurred since the commencement of the lawsuit, and Defendant, **Wal-Mart, Inc.**, knows of no such change in the citizenship of the Plaintiff.

7. The lawsuit is a civil action arising from a dispute pertaining to an alleged slip and fall at a Wal-Mart store located in Eagle Pass, Maverick County, Texas. The claims made include theories of premises liability and vicarious liability.

8. By this lawsuit, Plaintiff seeks actual damages over \$250,000.00 but not more than \$1,000,000. Thus, the amount in controversy exceeds \$75,000.00.

9. The lawsuit is within the Federal Court's original jurisdiction pursuant to 28 U. S. C. §1332, by reason of the diversity of citizenship of the parties and the amount of controversy.

10. This lawsuit is properly removed to the United States District Court, for the Western District of Texas, Del Rio Division, pursuant to 28 U. S. C. § 1441 and 28 U.S.C. §1446

11. The Original Notice of Removal is timely filed in accordance with 28 U.S.C. §1332(a) and §1441(b). Removal proceedings are in the nature of process to bring the parties before a federal court and mere procedural defects are not jurisdictional. *Covington v. Indemnity Ins. Co.*, 251 F.2d 930 (5th Cir.), cert. denied, 357 U.S. 921, 78 S.Ct. 1362, 2 L.Ed.2d 1365 (1958). Consequently, any defect in the removal process that does not go to the jurisdiction of the federal

court to which the action is removed is waivable. 14 WRIGHT, MILLER AND COOPER, FEDERAL PRACTICE AND PROCEDURE § 3721, p. 543 (1976). Conduct that constitutes a waiver of the right to remand has been described as, “affirmative conduct or unequivocal assent of a sort which would render it offensive to fundamental principles of fairness to remand.” *Maybruck v. Haim*, 290 F.Supp. 721 (S.D.N.Y.1968); see also, *Intercoastal Ref. Co. v. Jalil*, 487 F. Supp. 606, 607–08 (S.D. Tex. 1980). *Miles v. Starks*, 440 F.Supp. 947 (N.D.Tex.1977); *Transport Indemnity Co. v. Financial Trust Co.*, 339 F.Supp. 405 (C.D.Cal.1972).

12. Defendant requests a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendant, **Wal-Mart, Inc.**, prays that this action be removed from the 293rd Judicial District Court of Maverick County, Texas, Cause No. 21-02-39674-MCV, to the United States District Court, Western District of Texas, Del Rio Division; that this Court assume jurisdiction of this action; and henceforth, that this action be placed on the docket of this Court for further proceedings, the same as though this action had originally been instituted in this Court.

Respectfully Submitted,

**THORNTON, BIECHLIN
REYNOLDS, & GUERRA, LC**
One International Centre
100 N.E. Loop 410, Suite 500
San Antonio, TX 78216-4741
Telephone: 210-342-5555
Fax: 210-525-0666
Email: mwallis@thorntonfirm.com

BY /s/ Michael H. Wallis
Michael H. Wallis
Attorney-in-Charge
State Bar No.: 24033426

Laura Flores Macom
State Bar No.: 24002512
ATTORNEYS FOR DEFENDANT
WAL-MART, INC.

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument has been properly delivered pursuant to the Federal Rules of Civil Procedure on March 26, 2021 to the following counsel of record, via CM/ECF:

Law Offices of Zimmerman, Cotner,
LeJeune, Ressetar, Bennett & Lane
Christopher W. Bennett
3501 West Waco Drive
Waco, Texas 76710

/s/ Michael H. Wallis

Michael H. Wallis